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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,226	09/08/2003	Roger A. de la Torre	212/510	2699
23371	7590	07/25/2005		
CROCKETT & CROCKETT 24012 CALLE DE LA PLATA SUITE 400 LAGUNA HILLS, CA 92653			EXAMINER VRETTAKOS, PETER J	
			ART UNIT 3739	PAPER NUMBER

DATE MAILED: 07/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/658,226

Applicant(s)

DE LA TORRE ET AL.

Examiner

Peter J. Vrettakos

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 July 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

**The action is final.**

Related patents: 6,616,659 and 6,616,654.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**1. Claims 1,2,3,5,6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chu et al. (6,010,512).**

#### Independent claims 1, 5, 6

Chu discloses a system for removing a polyp from the body of a patient, said system comprising:

an endoscope (100) suitable for performing an endoscopic procedure on the patient;

and a device for removing polyps, said device comprising: a catheter (10) having a proximal end and a distal end; a cable trigger (16) operatively connected to the proximal end of the catheter; a pair of jaws (40) extending out of the distal end of the catheter; a snare cable (13) routed through the pair of jaws and operatively connected to the cable trigger; and a heating element (65; column 7 lines 34-37; figures 12-14,18) disposed on at least one of the jaws and located between the pair of jaws; and a source of power

Art Unit: 3739

(connected to electrical plug 83; concurrently disclosed with element 65) operably connected to the heating element; wherein the device for removing polyps (28) is sized and dimensioned for insertion into the endoscope.

Chu discloses a method of removing a polyp from the body of a patient, said method comprising the steps of: providing a system for removing a polyp from the body of the patient, said system comprising: an endoscope (100) suitable for performing an endoscopic procedure on the patient; and a device (10) for removing polyps, said device comprising: a catheter (10) having a end; proximal end and a distal end, a cable trigger (16) operatively connected to the proximal end of the catheter; a pair of jaws (40) extending out of the distal end of the catheter; a snare cable (13) routed through the pair of jaws and operatively connected to the cable trigger; and a heating element (65, figure 18) disposed on at least one of the jaws and located between the pair of jaws; a source of power (connected to electrical plug 83; concurrently disclosed with element 65) operably element connected to the heating; wherein the device for removing polyps is sized and dimensioned for insertion into the endoscope (see figure 12); inserting the endoscope into the body (23) of locating the polyp with the endoscope; the patient and inserting the device for removing polyps into the endoscope (100) such that the distal end of the device for removing polyps is located in the vicinity where the polyp (85, figure 12) is located; extending the snare cable to form a hoop sized and dimensioned to capture the polyp (figures 8,12); manipulating the hoop to capture the polyp (figure 8); activating the cable trigger to draw the snare cable proximally relative to the catheter

Art Unit: 3739

and to close the hoop around the polyp (patented claim 10); pulling the snare cable proximally relative to the catheter to draw the polyp into position between the pair of jaws and to close the pair of jaws upon the polyp (patented claim 10); and supplying heating power to the heating element to sever the polyp from tissue surrounding the polyp (patented claim 10).

Chu discloses a method of removing a polyp from the body of a patient, said method comprising the steps of: providing a device for removing polyps (10), said device comprising: a catheter (10) having a proximal end and a distal end; a cable trigger (16) operatively connected to the proximal end of the catheter; a pair of jaws (40) extending out of the distal end of the catheter; a snare cable (13) routed through the pair of jaws and operatively connected to the cable trigger (16); and a heating element (65) disposed on at least one of the jaws and located between the pair of jaws; placing the distal end of the catheter in the proximity of the polyp; pushing the snare cable distally relative to the catheter to open the pair of jaws relative to each other and form a hoop snare cable extending from the distal end of the catheter (figure 8); manipulating the hoop to engage the polyp (figure 8); pulling the snare cable proximally relative to the catheter to draw the polyp into position between the pair of jaws and to close the pair of jaws upon the polyp; and supplying heating power to the heating element to sever the polyp from tissue surrounding the polyp (patented claim 10).

Art Unit: 3739

Dependent claims (parentheticals refer to Chu)

2. The system of claim 1 wherein the heating element (65) is selected from the group consisting of a nichrome wire heating element, a ceramic heating element, an RF heating element, a monopolar electrode heating element and a bipolar electrode heating element (see column 7:34-37).

3. The system of claim 1 wherein: the pair of jaws (40) comprises a first jaw and a second jaw; the second jaw is rotatable relative (they are connected to each other through 13, when 10 is manually rotated so is 13 and 40) to the first jaw; and the snare cable (13) is operatively connected to the second jaw and runs from the second jaw to the first jaw and then to the cable trigger (see in figure 5).

Therefore at the time of the invention it would have been obvious to one ordinary skill in the art to modify Chu by incorporating a heating element (65) along the snare cable (13) illustrated in figure 5, which would be tantamount to the applicant's claimed invention.

The motivation would be to provide the added benefit of cauterization along the snare cable in figure 5 providing a cleaner cut and detachment of the polyp.

**2. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chu et al. in view of Stati et al. (3,829,903).**

Chu does not disclose silicone.

Stati discloses placing silicone on the surface of indwelling catheters to prevent blood clots.

Therefore at the time of the invention it would have been obvious to one ordinary skill in the art to modify Chu in view of Stati et al. by placing silicone on the jaws of the catheter. The motivation would be to reduce the chance of blood clot.

### ***Response to Arguments***

Applicant's arguments filed 7-13-05 have been fully considered but they are not persuasive. The Applicant argues that Chu fails to disclose a heating element between jaws. The Office directs the reader to element 65 in figures 18-19. Chu discloses that cable 65 can be attached to an electrical plug 83 to provide mono-polar (and alternatively bi-polar cauterization) (col. 7:34-40). Further, with reference to prior art (Fleury, Jr. USPN 4,326,530) Chu discloses in col. 1:62-65 that an analogous "cable" in an analogous (to the figure 18/19 embodiment) device includes not only the connection through a tubular member, but the "self-expanding loop or snare" as well. Armed with this disclosure, it is a fair interpretation of the Chu embodiment in figure 18/19 to maintain that element 65, which is disclosed as having cauterizing ability in col. 7:34-40, includes snare 70, and as a result Chu discloses a heating element (through tissue cauterization) along the snare. Moving to Chu figure 5, the analogous (to 70) snare (24) includes the jaws (40). Taken one step further, it is fair to maintain that Chu discloses a

Art Unit: 3739

heating element (includes the snare and jaws for reasons just mentioned) disposed on at least one of the jaws (40) (as claimed by the Applicant). The reason that the Chu rejection is a 103 is because the inferences made to arrive at the assertion that Chu discloses a heating element disposed on at least one of jaws was not explicitly found in Chu, but was obvious in light of Chu's embodiments and reference to the Fleury, Jr. patent (which the Office maintains is a valid reflection of a view generally held in the prior art). To this end, Chu makes obvious a heating element (65, figure 18) disposed on jaws (40, figure 5). Lastly, it is also noted that in figure 5, elements 24, 13, and 40 are all electrically connected and therefore heating of 24 results in heating of 40 as well. This connected idea/phenomenon is reflected by Chu's reference to Fleury, Jr in col. 1:67 through col. 2:1. Further, Chu makes no mention of insulation near the entire distal end on figure 5.

Next, the Applicant argues that Chu neglects to disclose a snare cable routed through the pair of jaws. In response, the Office directs the reader to figure 5 where a snare cable (13) routs through (the section of the cable, which includes snare 24, labeled as 13 runs between) the pair of jaws (40).

The Applicant argues that Chu neglects to disclose an RF heating element or bi-polar electrode heating. In response, the Office directs the reader to col. 7:34-40, which discloses an RF heating element (mono-polar/bipolar cauterization; also see col. 1:67 through col. 2:1 for RF reference to an analogous device in the Fleury, Jr patent) and bipolar electrode heating (bipolar cauterization).



***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ouchi ('195), Sewell, Jr. ('147).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pete J Vrettakos whose telephone number is 703 605 0215. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C Dvorak can be reached on 703 308 0994. The fax phone numbers for the organization where this application or proceeding is assigned are 703 746 7013 for regular communications and 703 746 7013 for After Final communications.

Art Unit: 3739

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0858.

Pete Vrettakos  
July 23, 2005



MICHAEL PEFFLEY  
PRIMARY EXAMINER